

AMENDED IN ASSEMBLY APRIL 13, 1998
AMENDED IN ASSEMBLY MARCH 23, 1998

CALIFORNIA LEGISLATURE—1997–98 REGULAR SESSION

ASSEMBLY BILL

No. 2134

Introduced by Assembly Member Escutia

February 18, 1998

An act to amend Section 395 of the Code of Civil Procedure, and to amend Section 2889.5 of, and to add Article 3.5 (commencing with Section 2894.10) and Article 4.4 (commencing with Section 2899) to Chapter 10 of Part 2 of Division 1 of, the Public Utilities Code, relating to public utilities, and making an appropriation therefor.

LEGISLATIVE COUNSEL'S DIGEST

AB 2134, as amended, Escutia. Telecommunications: telephone service and telephonic solicitation.

(1) Existing law regulates persons involved in soliciting sales by telephone and requires, among other things, a telephonic seller to register with the Consumer Law Section of the Department of Justice.

This bill would require the Public Utilities Commission, on or before July 1, 1999, to establish a list of telephone numbers of consumers that do not want to receive telephonic solicitations, to be known as the "do not call list." The bill would require the commission to update the list, as prescribed. The bill, with certain exceptions, would prohibit a telephonic seller, as defined, from making, or causing to be

made, any telephonic solicitation, as specified, to any residential, mobile, or telephonic paging device telephone number if the number for that telephone appears on the “do not call list.” The bill would provide that a contract made pursuant to a prohibited telephone call by a telephonic seller is not valid and enforceable against a consumer.

The bill would require the commission to provide its “do not call list,” upon request, to telephonic sellers for a fee. The fee would be deposited in the Special Telephonic Sellers Fund, which the bill would create. The money in the fund would be continuously appropriated to the commission for expenditure, as prescribed. The bill would prohibit any person or entity that obtains access to the list from using the list for any purpose other than to comply with the provisions of the bill, and would prescribe related matters.

The bill would allow any person who has received a telephonic solicitation in violation of the bill’s provisions to bring a civil action, as prescribed, against a telephonic seller to obtain an order for specified monetary and injunctive relief. The bill would authorize the Attorney General, district attorney, or city attorney to bring an action to obtain prescribed relief in the event of a violation of the prohibition. The bill would make a person who willfully violates the provisions relating to telephonic solicitations guilty of a misdemeanor, thereby imposing a state-mandated local program by creating a new crime. The bill would make related legislative findings and declarations.

(2) Under existing law, the commission has regulatory authority over the rates and services of telephone corporations.

This bill would require a telephone corporation, upon receiving a request for a telephone number in connection with its provisions of directory assistance services, to provide the telephone number to the requester at least 2 times before disconnecting the requester. The bill would prohibit the imposition of any additional charge upon a local telephone user for the costs that may be incurred in complying with this provision.

(3) Existing law prohibits any telephone corporation from making any change in the provider of any telephone service,



for which competition has been authorized, of a telephone subscriber until certain conditions have been met, including, with regard to the sale of residential telephone service, the requirement that the subscriber's decision to change his or her telephone service provider is confirmed by an independent third-party verification company, as specified.

This bill would extend that requirement to apply to the sale of business telephone service.

(4) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: yes. Fiscal committee: yes. State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 395 of the Code of Civil
2 Procedure is amended to read:
3 395. (a) Except as otherwise provided by law and
4 subject to the power of the court to transfer actions or
5 proceedings as provided in this title, the county in which
6 the defendants or some of them reside at the
7 commencement of the action is the proper county for the
8 trial of the action. If the action is for injury to person or
9 personal property or for death from wrongful act or
10 negligence, either the county where the injury occurs or
11 the injury causing death occurs or the county in which the
12 defendants, or some of them reside at the
13 commencement of the action, shall be a proper county for
14 the trial of the action. In a proceeding for dissolution of
15 marriage, the county in which either the petitioner or
16 respondent has been a resident for three months next
17 preceding the commencement of the proceeding is the
18 proper county for the trial of the proceeding. In a
19 proceeding for nullity of marriage or legal separation of
20 the parties, the county in which either the petitioner or
21 the respondent resides at the commencement of the

1 proceeding is the proper county for the trial of the
2 proceeding. In a proceeding to enforce an obligation of
3 support under Section 3900 of the Family Code, the
4 county in which the child resides is the proper county for
5 the trial of the action. In a proceeding to establish and
6 enforce a foreign judgment or court order for the support
7 of a minor child, the county in which the child resides is
8 the proper county for the trial of the action. Subject to
9 subdivision (b), when a defendant has contracted to
10 perform an obligation in a particular county, either the
11 county where the obligation is to be performed or in
12 which the contract in fact was entered into or the county
13 in which the defendant or any such defendant resides at
14 the commencement of the action shall be a proper county
15 for the trial of an action founded on that obligation, and
16 the county in which the obligation is incurred shall be
17 deemed to be the county in which it is to be performed
18 unless there is a special contract in writing to the
19 contrary. If none of the defendants reside in the state or
20 if residing in the state and the county in which they reside
21 is unknown to the plaintiff, the action may be tried in any
22 county which the plaintiff may designate in his or her
23 complaint, and, if the defendant is about to depart from
24 the state, the action may be tried in any county where
25 either of the parties reside or service is made. If any
26 person is improperly joined as a defendant or has been
27 made a defendant solely for the purpose of having the
28 action tried in the county or judicial district where he or
29 she resides, his or her residence shall not be considered
30 in determining the proper place for the trial of the action.

31 (b) Subject to the power of the court to transfer
32 actions or proceedings as provided in this title, in an
33 action arising from an offer or provision of goods, services,
34 loans or extensions of credit intended primarily for
35 personal, family or household use, other than an
36 obligation described in Section 1812.10 or Section 2984.4
37 of the Civil Code, or an action arising from a transaction
38 consummated as a proximate result of either an
39 unsolicited telephone call made by a seller engaged in the
40 business of consummating transactions of that kind or a

1 telephone call or electronic transmission made by the
2 buyer or lessee in response to a solicitation by the seller,
3 the county in which the buyer or lessee in fact signed the
4 contract, the county in which the buyer or lessee resided
5 at the time the contract was entered into, or the county
6 in which the buyer or lessee resides at the
7 commencement of the action, is the proper county for the
8 trial thereof.

9 (c) If within the county there is a municipal or justice
10 court having jurisdiction of the subject matter
11 established, in the cases mentioned in subdivision (a), in
12 the judicial district in which the defendant or any
13 defendant resides, in which the injury to person or
14 personal property or the injury causing death occurs, or,
15 in which the obligation was contracted to be performed
16 or, in cases mentioned in subdivision (b), in the judicial
17 district which the buyer or lessee resides, in which the
18 buyer or lessee in fact signed the contract, in which the
19 buyer or lessee resided at the time the contract was
20 entered into, or in which the buyer or lessee resides at the
21 commencement of the action, then that court is the
22 proper court for the trial of the action. Otherwise, any
23 municipal or justice court in the county having
24 jurisdiction of the subject matter is a proper court for the
25 trial thereof.

26 (d) Any provision of an obligation described in
27 subdivision (b) or (c) waiving those subdivisions is void
28 and unenforceable.

29 SEC. 2. Section 2889.5 of the Public Utilities Code is
30 amended to read:

31 2889.5. (a) No telephone corporation, or any person,
32 firm, or corporation representing a telephone
33 corporation, shall make any change, or authorize a
34 different telephone corporation to make any change, in
35 the provider of any telephone service for which
36 competition has been authorized of a telephone
37 subscriber until all of the following steps have been
38 completed:

1 (1) The telephone corporation, or its representatives
2 or agents, shall thoroughly inform the subscriber of the
3 nature and extent of the service being offered.

4 (2) The telephone corporation, or its representatives
5 or agents, shall specifically establish whether the
6 subscriber intends to make any change in his or her
7 telephone service provider, and explain any charges
8 associated with that change.

9 (3) For sales of residential ~~and business~~ service, the
10 subscriber's decision to change his or her telephone
11 service provider shall be confirmed by an independent
12 third-party verification company. For purposes of this
13 provision, the confirmation by a third-party verification
14 company shall be made as follows:

15 (A) The third-party verification company shall meet
16 each of the following criteria:

17 (i) Be independent from the telephone corporation
18 that seeks to provide the subscriber's new service.

19 (ii) Not be directly or indirectly managed, controlled,
20 or directed, or owned wholly or in part, by the telephone
21 corporation that seeks to provide the new service or by
22 any corporation, firm, or person who directly or
23 indirectly manages, controls, or directs, or owns more
24 than 5 percent of the telephone corporation.

25 (iii) Operate from facilities physically separate from
26 those of the telephone corporation that seeks to provide
27 the subscriber's new service.

28 (iv) Not derive commissions or compensation based
29 upon the number of sales confirmed.

30 (B) The telephone corporation seeking to verify the
31 sale shall do so by connecting the subscriber by telephone
32 to the third-party verification company or by arranging
33 for the third-party verification company to call the
34 subscriber to confirm the sale.

35 (C) The third-party verification company shall obtain
36 the subscriber's oral confirmation regarding the change,
37 and shall record that confirmation by obtaining
38 appropriate verification data. The record shall be
39 available to the subscriber upon request. Information
40 obtained from the subscriber through confirmation shall

1 not be used for marketing purposes. Any unauthorized
2 release of this information is grounds for a civil suit by the
3 aggrieved subscriber against the telephone corporation
4 or its employees who are responsible for the violation.

5 (D) Notwithstanding subparagraphs (A), (B), and
6 (C), a service provider shall not be required to comply
7 with these provisions when the customer directly calls the
8 local service provider to make changes in service
9 providers. However, a service provider shall not avoid the
10 verification requirements by asking a subscribing
11 customer to contact a local exchange service provider
12 directly to make any change in the service provider. A
13 local exchange service provider shall be required to
14 comply with these verification requirements for its own
15 competitive services. However, a local exchange service
16 provider shall not be required to perform any verification
17 requirements for any changes solicited by another
18 telephone corporation.

19 (4) For sales of all business services, the subscriber's
20 decision to change his or her service provider shall be
21 confirmed through any of the following means:

22 (A) Independent third party verification, as set forth
23 in paragraph (3) of subdivision (a).

24 (B) The telephone corporation shall mail to the
25 subscriber an information package seeking confirmation
26 of his or her change in the telephone corporation. The
27 information package shall describe the new service and
28 shall include a postage prepaid postcard or mailer that the
29 subscriber can use to deny, cancel, or confirm a service
30 order, as soon as possible, and wait 14 days after the
31 information package is mailed before making the change
32 in the telephone corporation. The telephone corporation
33 shall make the change only if the subscriber does not
34 cancel the change in service order.

35 (C) Verify the subscriber's change in his or her
36 telephone service provider by obtaining the subscriber's
37 signature on a document fully explaining the nature and
38 extent of the action. The document shall be a separate
39 document whose sole purpose is to explain the nature and
40 extent of the action.

(D) Obtain the subscriber's authorization through an electronic means that takes the information, including the calling number, and confirms the change to which the subscriber has given his or her consent.

(5) Where the telephone corporation obtains a written order for service, the document shall thoroughly inform the subscriber of the nature and extent of the action. The subscriber shall be furnished with a copy of the signed document. The subscriber by his or her signature on the document shall indicate a full understanding of the relationship being established with the telephone corporation. When a written subscriber solicitation or other document contains a letter of agency authorizing a change in service provider, in combination with other information including, but not limited to, inducements to subscribers to purchase service, the solicitation shall include a separate document whose sole purpose is to explain the nature and extent of the action. If any part of a mailing to a prospective subscriber is in language other than English, any written authorization contained in the mailing shall be sent to the same prospective subscriber in the same language.

(6) The telephone corporation shall retain a record of the verification of the sale for at least one year. These records shall be made available to the subscriber, the Attorney General, or the commission upon request.

(b) If a residential or business subscriber that has not signed an authorization notifies the telephone corporation within 90 days that he or she does not wish to change telephone corporations, the subscriber shall be switched back to his or her former telephone corporation at the expense of the telephone corporation that initiated the change.

(c) For purposes of this section, competitive services are those services where subscribers have the ability to prescribe to a telephone service provider.

(d) When a subscriber changes telephone service providers, the change shall be conspicuously noticed on the subscriber's bill. Notice in the following form is deemed to comply with this subdivision:

1
2 “NOTICE: Your local (or long distance) telephone
3 service provider has been changed from (name of prior
4 provider) to (name of current provider).
5

6 Cost of change: \$ ____.”
7

8 (e) Any telephone corporation that violates the
9 verification procedures described in this section shall be
10 liable to the telephone corporation previously selected by
11 the subscriber in an amount equal to all charges paid by
12 the subscriber after the violation.

13 (f) The remedies provided by this section are in
14 addition to any other remedies available by law.

15 (g) As described in federal law, no telephone
16 corporation, or any person, firm, or corporation
17 representing a telephone corporation, shall make any
18 change or authorize a different telephone corporation to
19 make any change in the provider of any telephone service
20 for which competition has been authorized of a telephone
21 subscriber without having on file, or having instituted
22 reasonable steps designed to obtain, signed, dated orders
23 for service from the subscriber. All orders shall be in the
24 form prescribed in federal law for letters of agency. As
25 described in federal law, the telephone corporation is
26 responsible for charges associated with disputed changes
27 in telephone service for which it cannot produce a signed,
28 dated order for service from the subscriber. This
29 subdivision applies to all intrastate services for which
30 competition has been authorized.

31 SEC. 3. Article 3.5 (commencing with Section
32 2894.10) is added to Chapter 10 of Part 2 of Division 1 of
33 the Public Utilities Code, to read:
34

35 Article 3.5. Telephone Consumer Privacy Rights Act
36 of 1998
37

38 2894.10. This article shall be known and may be cited
39 as the Telephone Consumer Privacy Rights Act of 1998.

1 2894.11. The Legislature finds and declares all of the
2 following:

3 (a) There is a compelling state interest in protecting
4 the right of privacy of telephone subscribers.

5 (b) To exercise their right of privacy, telephone
6 subscribers should be able to limit the distribution of their
7 telephone numbers to persons of their choosing.

8 (c) The act of becoming a telephone subscriber should
9 not undermine or diminish a person's right to privacy as
10 guaranteed under Section 1 of Article 1 of the California
11 Constitution.

12 2894.12. (a) Every local exchange telephone
13 corporation shall inform its customers of the provisions of
14 this article, including how to have their telephone
15 number included on the "do not call list" described in
16 Section 2894.14, together with information about other
17 state and federal laws that protect the rights of telephone
18 consumers. At a minimum, every telephone corporation
19 shall convey this information through inserts in billing
20 statements on an annual basis and through conspicuous
21 notices in the consumer information pages of any local
22 telephone directory distributed by that company.

23 (b) The commission shall publicize the provisions of
24 this article and other state and federal laws that protect
25 the rights of telephone consumers through the use of
26 public service announcements, brochures, the posting of
27 information on its Internet website, and by other
28 reasonable means of communication designed to ensure
29 that members of the public are aware of their rights as
30 telephone consumers.

31 2894.14. (a) On or before July 1, 1999, the commission
32 shall establish a list of telephone numbers of persons that
33 do not want to receive telephonic solicitations, to be
34 known as the "do not call list." The "do not call list" shall
35 be updated on a regular basis, as determined by the
36 commission, but not less than once every three months.

37 (b) A person may request the commission to add to, or
38 remove from, the "do not call list" up to five telephone
39 numbers assigned to that person by mailing a letter or
40 postcard to the commission, or, if the necessary

1 technology is made available by the commission, by
2 computer e-mail or communication with an appropriate
3 Internet website.

4 (c) (1) The definition of “telephonic seller” or
5 “seller” in Section 17511.1 of the Business and Professions
6 Code applies to this section.

7 (2) Except as permitted under paragraph (3), a
8 telephonic seller shall not make, or cause to be made, any
9 telephonic solicitation to any residential, mobile
10 (including a cellular or personal communication system
11 telephone or similar device), or telephonic paging device
12 telephone number if the number for that telephone
13 appears on the “do not call list” prepared by the
14 commission.

15 (3) Notwithstanding paragraph (2), a telephonic
16 seller may make, or cause to be made, a telephonic
17 solicitation under any of the following circumstances:

18 (A) In response to an express request of the person
19 called.

20 (B) To any person with whom the telephonic seller has
21 a prior existing business relationship if the call is made not
22 later than six months from the date of the last transaction.
23 This subparagraph does not authorize any subsidiary or
24 affiliate of the telephonic seller to make, or cause to be
25 made, any telephonic solicitation.

26 (C) Primarily in connection with an existing debt or
27 contract, the payment or performance of which has not
28 been completed at the time of the call.

29 (D) In accordance with prior negotiations in the
30 course of a visit to the seller’s place of business by the
31 person called. For the purposes of this subparagraph,
32 “place of business” means a fixed, permanent location
33 where consumer goods or services are displayed or
34 offered for sale on a continuing basis.

35 (E) In response to an advertisement placed by the
36 person called.

37 (d) The commission shall provide its “do not call list,”
38 upon request, to telephonic sellers for a fee. The amount
39 of the fee shall not exceed the actual costs incurred by the
40 commission in carrying out this article. The money shall

1 be deposited in the Special Telephonic Sellers Fund,
2 which is hereby created. The money in the fund is hereby
3 continuously appropriated to the commission to carry out
4 this article.

5 (e) It is the intent of the Legislature to provide a
6 General Fund appropriation, in the form of a loan to the
7 commission, in an amount sufficient to pay for program
8 startup costs incurred by the commission.

9 (f) A person or entity that obtains access to the “do not
10 call list” shall not use the list for any purpose other than
11 to comply with this article.

12 (g) A contract made pursuant to a telephone call by a
13 telephonic seller is not valid and enforceable unless the
14 contract arises from a telephonic solicitation that is
15 permitted under paragraph (3) of subdivision (c).

16 (h) (1) Any person who has received a telephonic
17 solicitation that is prohibited by paragraph (2) of
18 subdivision (c) may bring a civil action in any court of
19 competent jurisdiction against a telephonic seller to
20 recover or obtain one or more of the following:

21 (A) An order to enjoin a violation of paragraph (2) of
22 subdivision (c).

23 (B) A civil penalty in the amount of five hundred
24 dollars (\$500) for the first violation of paragraph (2) of
25 subdivision (c), and one thousand dollars (\$1,000) for a
26 second and each subsequent violation of that paragraph.

27 (C) Punitive damages.

28 (D) Court costs, including attorneys’ fees.

29 (E) Any other relief that the court deems proper.

30 (2) The Attorney General, or any district attorney or
31 city attorney within his or her respective jurisdiction,
32 may bring an action in the superior court in the name of
33 the people of the State of California against a telephonic
34 seller who has violated paragraph (2) of subdivision (c)
35 to recover or obtain one or more of the following:

36 (A) An order to enjoin a violation of paragraph (2) of
37 subdivision (c), and, upon notice to the defendant of not
38 less than five days, to temporarily restrain and enjoin the
39 violation. If it appears to the satisfaction of the court that
40 the defendant has violated paragraph (2) of subdivision

(c), the court may issue an injunction restraining further violations, without requiring proof that any person has been damaged by the violation.

(B) A civil penalty in the amount of five hundred dollars (\$500) for the first violation of paragraph (2) of subdivision (c), and one thousand dollars (\$1,000) for a second and each subsequent violation of that paragraph.

(C) Punitive damages.

(D) Court costs, including attorneys' fees.

(E) Any other relief that the court deems proper.

(3) No civil penalty shall be assessed for a violation if the defendant shows by a preponderance of the evidence that the violation was not intentional and resulted from a bona fide error made notwithstanding the defendant's maintenance of procedures reasonably adopted to avoid the error.

(i) This section applies to all telephonic sellers doing business within this state. The term "doing business within this state" has the same meaning as defined in subdivision (a) of Section 17511.3 of the Business and Professions Code.

2894.16. The rights, remedies, and penalties established by this article are in addition to the rights, remedies, or penalties established under other laws.

2894.18. Any person who willfully violates this article is guilty of a misdemeanor.

SEC. 4. Article 4.4 (commencing with Section 2899) is added to Chapter 10 of Part 2 of Division 1 of the Public Utilities Code, to read:

Article 4.4. Directory Assistance Services

2899. A telephone corporation, upon receiving a request for a telephone number in connection with its provision of directory assistance services, shall provide the telephone number to the requester at least two times before disconnecting the requester. No additional charge may be imposed upon a local telephone user for the costs that may be incurred in complying with this section.

1 SEC. 5. The provisions of this act are severable. If any
2 provision of this act or its application is held invalid, that
3 invalidity shall not affect other provisions or applications
4 that can be given effect without the invalid provision or
5 application.

6 SEC. 6. No reimbursement is required by this act
7 pursuant to Section 6 of Article XIII B of the California
8 Constitution because the only costs that may be incurred
9 by a local agency or school district will be incurred
10 because this act creates a new crime or infraction,
11 eliminates a crime or infraction, or changes the penalty
12 for a crime or infraction, within the meaning of Section
13 17556 of the Government Code, or changes the definition
14 of a crime within the meaning of Section 6 of Article
15 XIII B of the California Constitution.

16 Notwithstanding Section 17580 of the Government
17 Code, unless otherwise specified, the provisions of this act
18 shall become operative on the same date that the act
19 takes effect pursuant to the California Constitution.
20

